

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**DVI BUSINESS CREDIT CORPORATION
Successor-In-Interest to MEDCAPITAL
FUNDING I CORPORATION**

Plaintiff

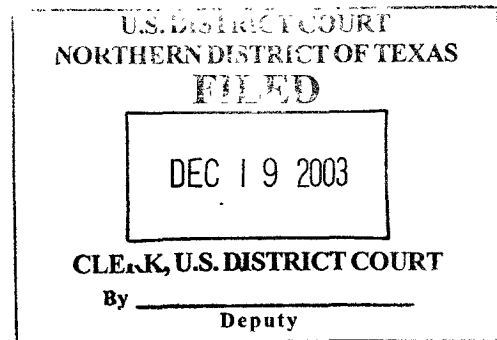
v.

**CARMEN SANTIAGO, an individual,
GUAYNABO HOME CARE PROGRAM,
INC., a Texas corporation, C&L
ESPARANZA HOME HEALTH, INC., a
Texas corporation, CC HOME HEALTH
LUBBOCK, a Texas corporation,
CUIDADO CASERO HOME HEALTH OF
EL PASO, INC., a Texas corporation,
CUIDADO CASERO HOME HEALTH OF
OKLAHOMA CITY, a Texas corporation,
CUIDADO CASERO HOME HEALTH
CENTRAL, INC., a Texas corporation**

Defendant

CASE NO. Music. 88-88888

Adv. No. 03-4455



4-03 CV 1466-A

**DEFENDANTS' BRIEF IN SUPPORT OF
MOTION TO WITHDRAW REFERENCE**

COME NOW, Defendants Carmen Santiago, Guaynabo Home Care Program, Inc., C&L Esparanza Home Health, Inc., CC Home Health Lubbock, Cuidado Casero Home Health of El Paso, Inc. and Cuidado Casero Home Health Central, Inc., in the above-styled and numbered cause of action, and files this Defendants' Brief In Support of Motion To Withdraw Reference, and for same would respectfully show unto the Court the following:

DEFENDANTS' BRIEF IN SUPPORT OF
MOTION TO WITHDRAW REFERENCE

I hereby certify that the foregoing is a true copy of the original thereof now in my office this the 19th day of December 20 03 at Ft. Worth Texas
Tawana C. Marshall, Clerk
United States Bankruptcy Court
Northern District of Texas

By [Signature]

Deputy

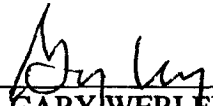
1. The Supreme Court in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S.Ct.2782, 106 L.Ed. 2d 26 stated that a Defendant has a right to a jury trial whether the cause of action is a core or non-core proceeding and specifically dealt with a right to a jury trial to recover alleged fraudulent transfers. The Court recognized the right of the Seventh Amendment to the U.S. Constitution wherein there is a right to a jury trial for all cases arising out of common law. Pursuant to Plaintiff's Original Complaint filed in U. S. Bankruptcy Court, Northern District of Texas, Fort Worth Division, the causes of action alleged against Defendants are for breach of contract, conversion, breach of fiduciary duty, suit on security interest, unjust enrichment, suit on guaranty and punitive damages, all pursuant to Texas common law. As a matter of law, Defendants have a right to a jury trial on all issues, whether core or non-core or otherwise related.

2. Pursuant to 28 U.S.C. §157(e), the Bankruptcy Judge may conduct a jury trial only with express consent of all parties. Defendant has not consented to the Bankruptcy Court conducting a jury trial in the adversary case. As a result, pursuant to 28 U.S.C. §157(d), good cause for withdrawal of reference has been given.

3. It is obvious that the claims are for damages in a monetary amount and it is clear that the Seventh Amendment of the U. S. Constitution allows for a trial by jury on state law claims. The present adversary case is one for monetary damages. Defendants are not creditors of Plaintiff, and have not filed a Proof of Claim or otherwise appeared in the bankruptcy matter.

Defendants pray that this Motion To Withdraw Reference be, in all things, GRANTED.

Respectfully submitted,

BY: 
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LUBBOCK, CUIDADO CASERO HOME
HEALTH OF EL PASO, INC., CUIDADO
CASERO HOME HEALTH CENTRAL, INC.**

CERTIFICATE OF SERVICE

This is to certify that on this the 17th day of December, 2003, a true and correct copy of

Defendants' Brief In Support Of Motion to Withdraw Reference was served upon counsel of record

Via U.S. First Class Mail as reflected below:

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